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10/582,103	02/22/2007	Jean-Luc Perrin	H0005953-2930	2818
46507 7590 12/04/2008 HONEYWELL TURBO TECHNOLOGIES 23326 HAWTHORNE BOULEVARD, SUITE #200 TORRANCE, CA 90505				
EXAMINER				
TRIEU, THAI BA				
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3748				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/582,103

**Applicant(s)**

PERRIN ET AL.

**Examiner**

Thai-Ba Trieu

**Art Unit**

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 02/20/2007.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on 12/10/2003. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

2. The IDS filed on February 20, 2007 has not been considered and initialized by the examiner because the S-signature of the attorney does not meet the requirement under 37 CFR 1.4(d)(2)(i).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show "***Figs. 6A and 6B***" (See Page 5, lines 12) and "***Figure 11***" (See Page 6, lines 4-5) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP §

608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **"nozzle device"** (See Claim 1); and **"variable nozzle device"** (See Claims 2-6 and 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

1. The disclosure is objected to because of the following informalities:

The following headings in the specification are missing:

Background of the Invention,  
Summary of the Invention,  
Brief Description of the Drawings, and  
Description of the Preferred Embodiments.

Applicant is requested to insert heading to separate the various parts application. Appropriate correction is required.

2. In the specification, applicants should avoid of using the form and legal phraseology **"said"**. This form and legal phraseology **"said"** should be replaced by **the --** (i.e. Page 2, lines 1, 5, and 28; Page 6, line 26, etc...)

### ***Claim Objections***

Claims 5/2, 5/3, 5/4; 6/2, 6/3, 6/4; 10/2, 10/3, 10/4 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the claimed feature of "variable nozzle device" has been cited in claims 2, 3 and 4, and "turbine" has been cited in claim 1.

### ***Claim Suggestions***

Applicants are suggested to revise claim 8 in the format of a method claim including all the limitations of claims that claim 8 depends upon.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically,

In the specification, applicants, on Page 6, lines 9-10, disclose that:

"The nozzle device according to the invention is part of a turbocharger..."

First of all, which part of the turbocharger is to be considered as the nozzle device, how the nozzle device is to be treated as a variable nozzle device; which component can be provided to the nozzle device or vary the flow through the nozzle device.

Secondly, is an annular nozzle (2) considered to be a nozzle device?

Thirdly, how variable is the annular nozzle?

Finally, the cross section of the nozzle of the turbocharger is varies because of the axial movement of the outboard wall for opening and closing the nozzle. The nozzle by itself cannot be variable.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 and its dependent claims 2-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically,

1. Claims 1-8 are not consistent, because claim 1 discloses a **nozzle device**, while claims 2-4 discloses a variable nozzle device, claim 5 disclose a turbocharger, claim 6 disclose an engine boosting system, claim 7 discloses a diesel engine boosting

system; and claim 8 discloses a method for operating an internal combustion engine.

Applicants are required to revise the claims to be consistent.

2. In Claims 2-4, the recitation of "the variable nozzle device" renders the claims indefinite, since it is not clear that how a nozzle device in claim 1 can be turned to be or treat as the variable nozzle device of claims 2-4. Applicants are required to clarify or to revise the claimed features.

3. In Claim 5, the recitations of "a turbocharger" and "a turbine" are double recitation, since the term of "turbine" has been cited in claim 1, line 1.

4. In Claim 5, the recitation of "variable nozzle device" is double recitation, since the term of "variable nozzle device" has been cited in claims 2-4, line 1.

5. In Claim 6, the recitation of "variable nozzle device" is double recitation, since the term of "variable nozzle device" has been cited in claims 2-4, line 1.

6. In claim 8, the recitation of "a method for operating an internal combustion engine with a parallel configuration of according to claim 6, wherein the variable nozzle device of the second turbocharger completely closes its nozzle opening when said second turbocharger is driven under low rotational speed of the engine" renders the claim indefinite, since it is not clear that how this method for operating an internal



combustion engine can be performed? How the variable nozzle device of the second turbocharger can recognize that it has to completely close its nozzle opening when said second turbocharger is driven under low rotational speed of the engine? Why the variable nozzle device of the second turbocharger has to close its nozzle opening? And how about the variable nozzle device of the first turbocharger has to be? Under low speed condition of the engine, how the variable nozzle device of the second turbocharger has to close its nozzle opening?

Applicants are required to clarify why the variable nozzle device of the second turbocharger has to close its nozzle opening, or to revise the claimed features.

7. In claim 9, the recitation of "said engine boosting system opens said annular nozzle at a start of an engine such that the exhaust gas flow substantially bypasses the turbine wheel" renders the claim indefinite, since it is not clear that how the exhaust gas can bypass the turbine wheel when the annular nozzle is in open position? Applicants are required to clarify or to revise the claimed features.

Note that at the start condition of the engine, in order the catalytic converter being heated up immediately, the nozzle should be closed in order that the exhaust gas bypasses the turbine wheel. As shown in Figure 3, as the cross section of the nozzle becomes wider/ the nozzle is in the open condition, the exhaust gas is to be delivered into the turbine housing and to penetrate on the turbine wheel.

8. Additionally, Claims 8-9 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

- Claim 8 lack of a controller/device to receive inputs and send outputs in order that the method can be applicable to operate the engine system.
- Claim 9 lack of the structure connectivity of the boosting system and the engine.
- How the boost system can recognize that the engine is at the start condition in order that the boosting system can control/open or close the annular nozzle?

7. In claim 10, the recitation of " the engine boosting system according to claim 11..." renders the claim indefinite, since there is no claim 11.

Note that claims 11-12 have been cancelled the letter file on October 19, 2005 (See International Preliminary Examination report).

Temporarily, claim 10 is treated as the claim depends upon claims 1-4.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 1-4 and 10 are rejected under 35 U.S.C. 102(b) as best understood as being anticipated by Franklin (Pub. Number EP 0 342 889 A1 or US Patent Number 4,973,223).***

Franklin discloses a nozzle device for a turbine (1) of a turbocharger, comprising:

a variable annular nozzle (a portion of inlet passage) defined between an inboard wall (5) and an outboard wall (15), wherein said outboard wall (15) is axially movable for completely closing said variable annular nozzle (Not Numbered);

an annular arrangement of vanes (6) is interposed in said variable annular nozzle (a portion of inlet passage), and said outboard wall (15) is constituted by a tube-shaped piston (4, 14, 15, 16) which is axially slidable into the radial inside or onto the radial outside of said annular arrangement of vanes (6) so as to contact said inboard wall (5),

characterized in that

said tube-shaped piston (4, 14, 15, 16) comprises at its distal end a stepped portion (15) which is axially slidable onto the radial outside or radial inside of said annular arrangement of vanes (6) (See Figures 2-4);

wherein said stepped portion (14, 15, 16) is axially slidable onto the radial outside of said annular arrangement of vanes (6) and directs exhaust gas entering into the turbine to the downstream side of the turbine (1) (See Figures 2-4);

wherein said annular arrangement of vanes (6) extends only over a part of the maximum interval between said inboard and outboard walls (5, 15);

wherein said inboard wall (5) is constituted by a vaned shroud (7) having said annular arrangement of vanes (6) (See Figures 1-4, Column 3, lines 50-58, Column 4, lines 1-58, and Column 5, lines 1-28).

***Claims 1-5 and 10 are rejected under 35 U.S.C. 102(b) as best understood as being anticipated by Lutz (Pub. Number EP 1 260 675 A1).***

Lutz discloses a nozzle device for a turbine (1) of a turbocharger, comprising:

a variable annular nozzle (10) defined between an inboard wall (12) and an outboard wall (Not Numbered), wherein said outboard wall (Not Numbered) is axially movable for completely closing said variable annular nozzle (10);

an annular arrangement of vanes (17) is interposed in said variable annular nozzle (10), and said outboard wall (Not Numbered) is constituted by a tube-shaped piston (13) which is axially slidable into the radial inside or onto the radial outside of said annular arrangement of vanes (17) so as to contact said inboard wall (12),

characterized in that

said tube-shaped piston (13) comprises at its distal end a stepped portion (Not Numbered) which is axially slidable onto the radial outside or radial inside of said annular arrangement of vanes (17) (See Figures 2-4);

wherein said stepped portion (Not Numbered) is axially slidable onto the radial outside of said annular arrangement of vanes (17) and directs exhaust gas entering into the turbine to the downstream side of the turbine (1) (See Figures 2-4);

wherein said annular arrangement of vanes (17) extends only over a part of the maximum interval between said inboard and outboard walls (12, Not Numbered);

wherein said inboard wall (12) is constituted by a vaned shroud (3) having said annular arrangement of vanes (17) (See Figures 1-9, Abstract, Paragraphs [0009]-[0027]);

a turbocharger having a turbine (1) comprising the variable nozzle device (12, 13) (See Figures 1-9).

***Claim 9 rejected under 35 U.S.C. 102(b) as best understood as being anticipated by Hohkita et al. (Pub. Number US 2002/0078931 A1).***

Hohkita discloses an engine boosting system comprising a turbocharger (2, 4) and a catalyst (17, 21) disposed downstream of said turbocharger (2, 4), wherein the turbocharger (2, 4) comprises an exhaust gas driven turbine (2) having a turbine wheel (5) and an annular nozzle (Not Numbered), characterized in that:

said engine boosting system (1) opens said annular nozzle (Not Numbered) at a start of an engine such that the exhaust gas flow substantially bypasses the turbine wheel (5) (See Figures 1-10 and 14, Abstract, Paragraphs [0048]-[0049], and [0052])

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 6-8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (Pub. Number DE 19835594 A1), in view of Franklin (Pub. Number EP 0 342 889 A1 or US Patent Number 4,973,223).***

Ganz discloses an engine boosting system comprising a parallel configuration of at least a first and a second turbocharger (2a, 2b) wherein a turbine (5a, 5b) of said second turbocharger (2a, 2b) having a variable nozzle device;

control means (19) for closing the turbine annular nozzle (within turbine housing) to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time (See Figure and Abstract);

wherein the variable nozzle device of the second turbocharger (2a, 2b) completely closes its nozzle opening when said second turbocharger (2a, 2b) is driven under low rotational speed of the engine.

However, Ganz fails to disclose the structural details of a variable nozzle device being disclosed in claims 1-4.

Franklin teaches that it is conventional in the turbocharger art, to utilize a nozzle device for a turbine (1) of a turbocharger, comprising:

a variable annular nozzle (a portion of inlet passage) defined between an inboard wall (5) and an outboard wall (15), wherein said outboard wall (15) is axially movable for completely closing said variable annular nozzle (Not Numbered);

an annular arrangement of vanes (6) is interposed in said variable annular nozzle (a portion of inlet passage), and said outboard wall (15) is constituted by a tube-shaped

piston (4, 14, 15, 16) which is axially slidable into the radial inside or onto the radial outside of said annular arrangement of vanes (6) so as to contact said inboard wall (5), characterized in that

said tube-shaped piston (4, 14, 15, 16) comprises at its distal end a stepped portion (15) which is axially slidable onto the radial outside or radial inside of said annular arrangement of vanes (6) (See Figures 2-4);

wherein said stepped portion (14, 15, 16) is axially slidable onto the radial outside of said annular arrangement of vanes (6) and directs exhaust gas entering into the turbine to the downstream side of the turbine (1) (See Figures 2-4);

wherein said annular arrangement of vanes (6) extends only over a part of the maximum interval between said inboard and outboard walls (5, 15) (See Figures 1-4, Column 3, lines 50-58, Column 4, lines 1-58, and Column 5, lines 1-28).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the structural details of a variable nozzle device, as taught by Franklin, to improve the efficiency of the Ganz engine boosting system/the turbocharged internal combustion engine, since the use thereof would have provided an alternative arrangement/design for controlling exhaust gas; and then, when the engine receives desired boost air depending upon such controlled exhaust gas, the engine system can perform at a desired condition.

Note that the limitation “to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time” is an intended use recitation. A recitation of the intended use of the claimed invention must

result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, and then it meets the claim. In a claim drawn to process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCCPA 1963).

The recitations of "to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time" and "the variable nozzle device of the second turbocharger completely closing its nozzle opening when said second turbocharger being driven under low rotational speed of the engine" are considered as the functional language. The modified Ganz discloses all the structural components of an engine system, which are read on those of the instant invention. Therefore, the modified Ganz system is capable of performing the same desired functions as the instant invention of optimizing the engine brake condition, and the variable nozzle device of the second turbocharger completely closing its nozzle opening when said second turbocharger being driven under low rotational speed of the engine, which have been claimed in claims 7-8.

***Claims 6-8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (Pub. Number DE 19835594 A1), in view of Lutz (Pub. Number EP 1 260 675 A1).***



Ganz discloses an engine boosting system comprising a parallel configuration of at least a first and a second turbocharger (2a, 2b) wherein a turbine (5a, 5b) of said second turbocharger (2a, 2b) having a variable nozzle device;

control means (19) for closing the turbine annular nozzle (within turbine housing) to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time (See Figure and Abstract);

wherein the variable nozzle device of the second turbocharger (2a, 2b) completely closes its nozzle opening when said second turbocharger (2a, 2b) is driven under low rotational speed of the engine.

However, Ganz fails to disclose the structural details of a variable nozzle device being disclosed in claims 1-4.

Lutz teaches that it is conventional in the turbocharger art, to utilize a nozzle device for a turbine (1) of a turbocharger, comprising:

a variable annular nozzle (10) defined between an inboard wall (12) and an outboard wall (Not Numbered), wherein said outboard wall (Not Numbered) is axially movable for completely closing said variable annular nozzle (10);

an annular arrangement of vanes (17) is interposed in said variable annular nozzle (10), and said outboard wall (Not Numbered) is constituted by a tube-shaped piston (13) which is axially slidable into the radial inside or onto the radial outside of said annular arrangement of vanes (17) so as to contact said inboard wall (12),

characterized in that

said tube-shaped piston (13) comprises at its distal end a stepped portion (Not Numbered) which is axially slidable onto the radial outside or radial inside of said annular arrangement of vanes (17) (See Figures 2-4);

wherein said stepped portion (Not Numbered) is axially slidable onto the radial outside of said annular arrangement of vanes (17) and directs exhaust gas entering into the turbine to the downstream side of the turbine (1) (See Figures 2-4);

wherein said annular arrangement of vanes (17) extends only over a part of the maximum interval between said inboard and outboard walls (12, Not Numbered);

wherein said inboard wall (12) is constituted by a vaned shroud (3) having said annular arrangement of vanes (17) (See Figures 1-9, Abstract, Paragraphs [0009]-[0027]).

It would have been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the structural details of a variable nozzle device, as taught by Lutz, to improve the efficiency of the Ganz engine boosting system/the turbocharged internal combustion engine, since the use thereof would have provided an alternative arrangement/design for controlling exhaust gas; and then, when the engine receives desired boost air depending upon such controlled exhaust gas, the engine system can perform at a desired condition.

Note that the limitation “to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time” is an intended use recitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order

to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, and then it meets the claim. In a claim drawn to process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCCPA 1963).

The recitations of "to an optimum position for engine braking where there is provided a high boost pressure and a high back pressure at the same time" and "the variable nozzle device of the second turbocharger completely closing its nozzle opening when said second turbocharger being driven under low rotational speed of the engine" are considered as the functional language. The modified Ganz discloses all the structural components of an engine system, which are read on those of the instant invention. Therefore, the modified Ganz system is capable of performing the same desired functions as the instant invention of optimizing the engine brake condition, and the variable nozzle device of the second turbocharger completely closing its nozzle opening when said second turbocharger being driven under low rotational speed of the engine, which have been claimed in claims 7-8.

#### ***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (571) 272-4867. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TTB  
October 2, 2008

/Thai-Ba Trieu/  
Primary Examiner  
Art Unit 3748